**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**
**First Appeal No. 1035 of 2001**
**(Old No. 7 of 2000)**

1. Chandra Kishore S/o Sri Munna Lal

1/1. Smt. Usha Kishore, W/o Chandra Kishore

2. Chandra Deep S/o Sri Chandra Kishore,

All residents of 79-Gandhi Road,

Dehradun .. Plaintiffs/ Appellants.

**Versus**

Sri Anil Kumar S/o Sri Jagdish Prasad Goyal

R/o 79- Gandhi Road,

Dehradun - Defendant /Respondent.

**AND**
**Civil Revision No. 378/2001**
**(Old No. 7 of 2000)**

1- Chandra Kishore S/o Sri Munna Lal

1/1. Smt. Usha Kishore, W/o Chandra Kishore

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**Versus**

Sri Anil Kumar S/o Sri Jagdish Prasad Goyal

R/o 79- Gandhi Road,

Dehradun - Defendant /Respondent.

Sri Kawaljeet Singh, learned counsel for the appellants/revisionists.
Sri Alok Singh, Senior Advocate, assisted by Ms. Mamta Joshi, learned counsel for the respondent.

**Dated: July 30, 2007.**

**Coram: Hon'ble P.C. Verma, J.**
**Hon'ble B.C. Kandpal, J.**

The First Appeal, U/S 96 of Civil Procedure Code, and the Civil Revision U/S 115 of the C.P.C. have been preferred against the judgment and order

dated 30-11-99, passed by Civil Judge (Senior Division), Dehradun, rejecting the amendment application No. 115-Ka, consequently rejecting the plaint of Original Suit No. 100 of 1996 for want of proper valuation of the suit and deficiency in court fee under Order -7 Rule- 11 C.P.C. .In both, the F.A. and the C.R. the same judgment and order has been challenged and similar controversy is involved, therefore, these are being decided by this common judgment.

2- Brief facts of the case are that the plaintiffs/appellants instituted a suit against the defendant/respondent for permanent injunction, prohibitory injunction and declaration in respect of the property shown in the Schedules given with the plaint. The defendant/respondent filed written statement. In para -35 of the W.S. the defendant /respondent raised objection regarding devaluation of the suit and deficiency in court fee paid by the plaintiffs/appellants. The Civil Judge on the pleadings of parties framed as many as 11 issues in the suit. Issue No.10 was framed regarding devaluation of the suit and deficiency in court fee. The learned Civil Judge on 30-8-99 decided the issue No.10 as preliminary issue and held that the plaintiffs has sought four distinct reliefs in respect of six properties. The plaintiff valued the suit at Rs. 25,00,000/- but the court fee paid has not been clarified. The learned Civil Judge decided the issue No. 10 in affirmative and held that the plaintiffs have not valued the suit properly and the court fee paid was insufficient. Therefore, the plaintiffs were directed to correct the proper valuation of the suit and pay required court fee within seven days. Thereafter the plaintiffs filed amendment

application 115-Ka on 1-10-1999. The trial Court invited objections against the above application. The defendant filed objection against the amendment application.

3- The learned Civil Judge heard the learned counsel for the parties on the amendment application 115-Ka and vide inmpugned judgment and order dated 30-11-99 rejected the application 115-Ka.

4- Feeling aggrieved by the aforesaid judgment and order the plaintiffs/appellants have preferred the first appeal and the civil revision before this Court.

5- We have heard the learned counsel for the parties and perused the record.

6- Perusal of the record reveals that the trial Court vide its order dated 30-8-99, while deciding the issue No. 10, had directed the plaintiffs to value the suit properly and pay required court fee within seven days. Thereafter, the plaintiffs moved amendment applications 108-Ka and 110-Ka on 13-9-1999 and 16-9-1999 respectively. The application paper No. 108-Ka was not pressed by the plaintiffs whereas the application No. 110-Ka was rejected by the trial Court on merit. Then the plaintiffs preferred amendment application paper No. 115-Ka.

7- The argument of the plaintiffs before the learned Civil Judge was that the court has power U/S 148 C.P.C. to extend the time for complying the order of the court. Against it contention of the defendant was that the Court has granted time to the plaintiffs to amend the valuation clause and pay court fee. In this

regard the plaintiffs had preferred application on 13-9-99 which was not pressed by the plaintiff without any cause and again the amendment application 110-ka was rejected by the court on merit vide order dated 29-9-99. The amendment application 110-Ka has been filed not only in respect of valuation and payment of court fee but the plaintiffs sought substantial amendments in the relief clauses. The argument of the defendant was that the amendment application 115-Ka is barred by the principle of 'Resjudicata'.

8- Now it is to be seen as to whether the amendment application paper No. 115-Ka is not bonafide and is barred by the principle of 'Resjudicata'.

9- While deciding issue No. 10, the learned Civil Judge vide his order dated 30-8-99, has held that the suit has not been properly valued and the court fee paid is insufficient and the plaintiffs were directed to revalue the suit and pay required court fee within seven days. The plaintiffs did not comply the order within prescribed period of seven days and filed amendment application paper No. 108-Ka on 13-9-99 after about 12 days of the order of the court and that application was not pressed by the plaintiffs without assigning any reason. Thereafter on 24-9-99 again the plaintiffs moved amendment application paper No. 110-Ka after about 23 days of the order of the court. In this application the plaintiffs did not make any prayer to extend the time for compliance of the order of the court dated 30.-89-99. This application was decided by the court on merit after hearing learned counsel for both the parties vide order dated 29-9-99. The plaintiffs did not prefer any appeal or revision against the order dated 29-9-99. Again on 1-10-99 the

plaintiffs filed amendment application paper No. 115-Ka. In this application also the plaintiffs neither made mention that this application is in compliance of the order dated 30-8-99 nor sought extension of the said order of the court. In the aforesaid circumstances the plaintiffs were not entitled to get the benefit of Section 148 C.P.C. The trial court has rightly did not extend the benefit to the plaintiffs.

10- Further perusal of amendment application 115-Ka reveals that the plaintiffs have sought amendments not only in the valuation clause but has sought substantial changes in reliefs clauses and it appears that it has been moved to cover up the point of res judicata.

11- The Hon'ble Supreme Court in paragraph No. 7 of the decision of **Satyadhyan Ghosal and others Vs. Smt. Deorajin Debi and another,** reported in **AIR 1960 Supreme Court 941** has held as under: -

> "*The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or a question of law-has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies neither party will be allowed in a future suit or proceeding between the same parties to convass the matter again. The principle of res judicata is*

*embodied in relation to suits in S. 11 of the Code of Civil Procedure; but even where S. 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation."*

12- Further in paragraph-8 of the above decision the Hon'ble Apex Court has further held as under: -

*"The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings."*

13- The principle of res judicata can be invoked not only in separate subsequent proceedings but they also get attracted in subsequent stage of the same proceedings. This view has been taken by the the Hon'ble Supreme Court in the case of **Y.B. Patil and others Vs. Y.L. Patil,** reported in **AIR 1977 Supreme Court 392,** in which the Hon'ble Apex Court has laid down the principle as below: -

*"Principles of res judicata can be invoked not only in separate subsequent proceedings; they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding.*

14- In the case in hand perusal of order dated 29-9-1999 passed on the amendment application No.

110-Ka, reveals that the trial court had rejected the application on merit. No appeal or revision has been preferred against that order and the order has achieved finality, therefore, in filing the subsequent application for amendment paper No. 115-Ka was certainly not maintainable as barred by the principle of res judicata.

15- It is pertinent to mention here that the trial Court had decided issue No. 10 in the affirmative and clear directions were given to the plaintiffs/appellants to re-value the suit properly in seven days and pay the required court fee. But rather complying the order of the court the plaintiffs/appellants sought amendments in substantial portion of relief clauses. Further from the facts of the circumstances of the case it becomes quite clear that the plaintiffs/appellants have not pleaded the case before the trial Court bonafidely in seeking the amendment in valuation and court fee clause.

16- In view of the above principles of law laid down by the Hon'ble Apex Court, the finding of the learned Civil Judge on the point of res judicata, is just and reasonable and do not require interference by this Court. The trial court was justified in rejecting the plaint of the suit of the plaintiffs for want of proper valuation of the suit and deficiency in court fee.

17- For the reasons aforesaid, both the appeal and the revision lack merit and are liable to be dismissed.

18- The first appeal as well as the civil revision are dismissed. The impugned judgment and order dated 30-11-1999 is upheld. No order as to costs.

19- Let a copy of this order be placed in the file of Civil Revision No. 378/2001.

**(B.C. Kandpal, J.)** **(P.C. Verma, J.)**

ISB